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## 4 NOTE: CHANGES MADE BY THE COURT 5 6 7

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### UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

10 SOUTH COAST AIR QUALITY  
11 MANAGEMENT DISTRICT, EAST YARD  
12 COMMUNITIES FOR  
13 ENVIRONMENTAL JUSTICE, PEOPLE'S  
14 COLLECTIVE FOR ENVIRONMENTAL  
15 JUSTICE, and SIERRA CLUB,

16 Plaintiffs,

17 v.

18 UNITED STATES ENVIRONMENTAL  
19 PROTECTION AGENCY and MICHAEL  
20 REGAN, in his official capacity as  
Administrator of the United States  
Environmental Protection Agency,

21 Defendants.

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**Case No. 2:23-cv-02646-JLS-PD**

**CONSENT DECREE  
(CONSOLIDATED CASES)**

1       WHEREAS, on April 7, 2023, Plaintiff South Coast Air Quality Management District  
2 (“SCAQMD”) filed lead Case No. 2:23-cv-02646 JLS-PD against Michael S. Regan, in his  
3 official capacity as Administrator of the United States Environmental Protection Agency  
4 (“SCAQMD Compl.”);

5       WHEREAS, on May 9, 2023, Plaintiffs East Yard Communities for Environmental  
6 Justice, People’s Collective of Environmental Justice, and Sierra Club (collectively,  
7 “Environmental Plaintiffs”) filed now-consolidated Case No. 2:23-cv-03545 JLS-PD against  
8 the United States Environmental Protection Agency and Michael Regan, in his official capacity  
9 as Administrator of the United States Environmental Protection Agency (“EPA” or  
10 “Defendants”) (“Env. Compl.”);

11       WHEREAS, on November 27, 2023, this Court, on the parties’ joint motion,  
12 consolidated these two related cases “for all purposes” (ECF No. 23);

13       WHEREAS, SCAQMD and Environmental Plaintiffs (generally referred to herein  
14 collectively as “Plaintiffs”) allege that EPA has failed to undertake a non-discretionary duty  
15 under the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401–7671q, and that such alleged failure is  
16 actionable under section 304(a)(2) of the CAA, *id.* § 7604(a)(2), and Plaintiffs are seeking  
17 declaratory and injunctive relief as well as attorney fees and other costs of litigation pursuant to  
18 CAA section 304(a), *id.* § 7604(a), SCAQMD Compl. Prayer for Relief ¶¶ 1-5, Env. Compl.  
19 Prayer for Relief ¶¶ 1-5;

20       WHEREAS, CAA section 110(k) sets forth the process by which EPA reviews State  
21 Implementation Plan (“SIP”) submittals. 42 U.S.C. § 7410(k). In accordance with that process,  
22 EPA must determine whether a SIP or SIP revision is complete within six (6) months after  
23 EPA receives the submission of a SIP or SIP revision, and if EPA does not determine  
24 completeness of the SIP or SIP revision within six (6) months, then the submittal is deemed  
25 complete by operation of law, *id.* § 7410(k)(1)(B);

26       WHEREAS, pursuant to CAA sections 110(k)(2)-(4), 42 U.S.C. §§ 7410(k)(2)-(4),  
27 EPA is required to approve, disapprove, or conditionally approve, in whole or in part, each  
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1 plan or revision, within twelve (12) months of a determination of completeness by EPA or a  
2 submittal being deemed complete by operation of law;

3 WHEREAS, Plaintiffs allege that EPA has failed to perform a duty mandated by CAA  
4 sections 110(k)(2)-(4), 42 U.S.C. §§ 7410(k)(2)-(4), to take final action to approve or  
5 disapprove, or conditionally approve, in whole or in part, a “SIP submittal” entitled “Final  
6 Contingency Measure Plan,” submitted to EPA by the California Air Resources Board on or  
7 about December 31, 2019. SCAQMD Compl. ¶ 12; Env. Compl. ¶ 42. Plaintiffs further allege  
8 that the Final Contingency Measure Plan became complete by operation of law on July 1,  
9 2020, and that EPA had a mandatory duty to take final action on the SIP submittal by July 1,  
10 2021, SCAQMD Compl. ¶ 14; Env. Compl. ¶ 46;

11 WHEREAS, the relief requested in the Complaints includes, among other things, an  
12 order from this Court to establish a date certain by which EPA must fulfill its obligations;

13 WHEREAS, Plaintiffs and EPA have agreed to a consolidated settlement of this action  
14 without admission of any issue of fact or law, except as expressly provided herein;

15 WHEREAS, Plaintiffs and EPA, by entering into this Consent Decree (the “Consent  
16 Decree”), do not waive or limit any claim, remedy, or defense, on any grounds, related to any  
17 final EPA action;

18 WHEREAS, Plaintiffs and EPA consider this Consent Decree to be an adequate and  
19 equitable resolution of all claims in these consolidated matters and therefore wish to effectuate  
20 a settlement;

21 WHEREAS, it is in the interest of the public, Plaintiffs, EPA, and judicial economy to  
22 resolve these matters without protracted litigation;

23 WHEREAS, Plaintiffs and EPA agree that this Court has jurisdiction over the matters  
24 resolved in this Consent Decree pursuant to the citizen suit provision in CAA  
25 section 304(a)(2), 42 U.S.C. § 7604(a)(2), and that venue is proper in the Central District of  
26 California pursuant to 28 U.S.C. § 1391(e); and

27 WHEREAS, the Court, by entering this Consent Decree, finds that the Consent Decree  
28 is fair, reasonable, in the public interest, and consistent with the CAA;

1           NOW THEREFORE, before the taking of testimony, without trial or determination of  
2 any issues of fact or law, and upon the mutual consent of Plaintiffs and EPA, it is hereby  
3 ordered, adjudged and decreed that:

4           1. The appropriate EPA official shall sign a notice of final rulemaking to approve,  
5 disapprove, conditionally approve, or approve in part and disapprove in part, the Final  
6 Contingency Measure Plan no later than July 1, 2024.

7           2. EPA shall, within fifteen (15) business days of signature of the action set forth in  
8 Paragraph 1, send notice of the action to the Office of the Federal Register for review and  
9 publication in the *Federal Register*.

10           3. If California withdraws the SIP submittal described above, then EPA's obligation to  
11 take the actions required by Paragraphs 1 and 2 with respect to that SIP submittal is  
12 automatically terminated, and EPA has no obligation to take any action concerning such SIP  
13 submittal.

14           4. After EPA has completed the action set forth in Paragraph 1 of this Consent Decree,  
15 after notice of the final action required by Paragraph 2 has been published in the *Federal*  
16 *Register*, and the issue of costs of litigation, including reasonable attorneys' fees, has been  
17 resolved, EPA may move to have this Consent Decree terminated. Plaintiffs shall have fourteen  
18 (14) days to respond to such motion, unless the parties stipulate to a longer time for Plaintiffs  
19 to respond, which stipulation must be approved by the Court. The basis of Plaintiffs'  
20 opposition to such motion shall be limited to whether the parties have resolved the issue of  
21 costs of litigation including reasonable attorney's fees and whether EPA has failed to perform  
22 or failed to completely perform the actions required by this Consent Decree.

23           5. The deadline established by this Consent Decree may be extended (a) by written  
24 stipulation of Plaintiffs and EPA with notice to the Court, or (b) by the Court upon motion of  
25 EPA for good cause shown pursuant to the Federal Rules of Civil Procedure and upon  
26 consideration of any response by Plaintiffs and any reply by EPA. Any other provision of this  
27 Consent Decree also may be modified by the Court following the filing of a motion of an  
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1 undersigned party for good cause shown pursuant to the Federal Rules of Civil Procedure and  
2 upon consideration of any response by a non-moving party and any reply.

3 6. If a lapse in EPA appropriations occurs prior to a deadline in Paragraphs 1 or 2 in  
4 this Decree, that deadline shall be extended automatically one day for each day of the lapse in  
5 appropriations. Nothing in this Paragraph shall preclude EPA from seeking an additional  
6 extension of time through modification of this Consent Decree pursuant to Paragraph 5.

7 7. Plaintiffs and EPA agree that this Consent Decree constitutes a complete settlement  
8 of any and all claims in these consolidated cases.

9 8. In the event of a dispute between either or both of Plaintiffs and EPA concerning the  
10 interpretation or implementation of any aspect of this Consent Decree, the disputing party shall  
11 provide the other party with a written notice, via electronic mail or other means, outlining the  
12 nature of the dispute and requesting informal negotiations. The disputing parties shall meet and  
13 confer in order to attempt to resolve the dispute. If the parties to the dispute are unable to  
14 resolve the dispute within ten (10) business days after receipt of the notice, any disputing party  
15 may petition the Court to resolve the dispute.

16 9. No motion or other proceeding seeking to enforce this Consent Decree or for  
17 contempt of Court shall be properly filed unless the procedure set forth in Paragraph 8 has been  
18 followed, and the moving party has provided the other party with written notice received at  
19 least ten (10) business days before the filing of such motion or proceeding.

20 10. The deadline for filing a bill of costs pursuant to C.D. Cal. Local Rule 54 and a  
21 motion for attorney fees also pursuant to Local Rule 54 for activities performed prior to entry  
22 of the Consent Decree is hereby extended until ninety (90) days after this Consent Decree is  
23 entered by the Court. During this period, the Parties shall seek to resolve any claim for costs of  
24 litigation (including reasonable attorney fees), and if they cannot reach a resolution, a Plaintiff  
25 with an unresolved claim may file a motion for costs of litigation (including reasonable  
26 attorney fees). Absent an order by the Court extending the deadline, any bill of costs or  
27 motions for attorney fees filed after the ninety (90) day deadline will be denied as untimely.

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1 Any motion, opposition, and reply shall be filed in compliance with the Local Rules, including  
2 the timing requirements set by Local Rules 7-9 and 7-10.

3 11. This Court shall retain jurisdiction to enforce the terms of this Consent Decree and  
4 to consider any requests for costs of litigation (including reasonable attorney fees).

5 12. Nothing in the terms of this Consent Decree shall be construed (a) to confer upon  
6 this Court jurisdiction to review any final rule or determination issued by EPA pursuant to this  
7 Consent Decree, (b) to confer upon this Court jurisdiction to review any issues that are within  
8 the exclusive jurisdiction of the United States Courts of Appeals under CAA section 307(b)(1),  
9 42 U.S.C. § 7607(b)(1), or (c) to waive any claims, remedies, or defenses that the parties may  
10 have under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).

11 13. Nothing in this Consent Decree shall be construed to limit or modify any discretion  
12 accorded EPA by the Clean Air Act or by general principles of administrative law in taking the  
13 actions which are the subject of this Consent Decree, including the discretion to alter, amend,  
14 or revise any final actions promulgated pursuant to this Consent Decree. EPA's obligation to  
15 perform each action specified in this Consent Decree does not constitute a limitation or  
16 modification of EPA's discretion within the meaning of this paragraph.

17 14. Except as expressly provided herein, nothing in this Consent Decree shall be  
18 construed as an admission of any issue of fact or law, or as a waiver of or limitation on any  
19 claim, remedy, or defense, on any grounds, related to any final action EPA takes with respect  
20 to the actions addressed in this Consent Decree.

21 15. Plaintiffs reserve the right to seek additional costs of litigation (including  
22 reasonable attorney fees) incurred subsequent to entry of this Consent Decree. EPA reserves  
23 the right to oppose any such request for additional costs of litigation (including attorney fees).

24 16. It is hereby expressly understood and agreed that this Consent Decree was jointly  
25 drafted by Plaintiffs and EPA. Accordingly, the parties hereby agree that any and all rules of  
26 construction to the effect that ambiguity is construed against the drafting party shall be  
27 inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent  
28 Decree.

1       17. The parties agree and acknowledge that before this Consent Decree can be finalized  
2 and entered by the Court, EPA must provide notice of this Consent Decree in the *Federal*  
3 *Register* and an opportunity for public comment pursuant to CAA section 113(g),  
4 42 U.S.C. § 7413(g). After this Consent Decree has undergone notice and comment, the  
5 Administrator and/or the Attorney General, as appropriate, shall promptly consider any written  
6 comments in determining whether to withdraw or withhold their consent to the Consent  
7 Decree, in accordance with CAA section 113(g). If the Administrator and/or the Attorney  
8 General do not elect to withdraw or withhold consent, the parties shall promptly file a motion  
9 requesting that the Court enter this Consent Decree.

10      18. Any notices required or provided for by this Consent Decree shall be in writing, via  
11 electronic mail or other means, and sent to the following (or to any new address of counsel as  
12 filed and listed in the docket of the above-captioned matters, at a future date):

13      For Plaintiff South Coast Air Quality Management District:

14                    MATTHEW D. ZINN  
15                    Shute, Mihaly & Weinberger LLP  
16                    396 Hayes Street  
17                    San Francisco, CA 94102  
18                    Telephone (415) 552-7272  
19                    zinn@smwlaw.com

20      For Plaintiffs East Yard Communities for Environmental Justice, People's Collective  
21                    for Environmental Justice, and Sierra Club:

22                    FERNANDO GAYTAN  
23                    Earthjustice  
24                    707 Wilshire Boulevard, Suite 4300  
25                    Los Angeles, CA 90017  
26                    Telephone (415) 217-2025  
27                    fgaytan@earthjustice.org

28      For Defendants:

29                    MARTIN F. McDERMOTT  
30                    U.S. Department of Justice  
31                    Environment & Natural Resources Division  
32                    Environmental Defense Section  
33                    4 Constitution Square  
34                    150 M Street N.E., Suite 4.147

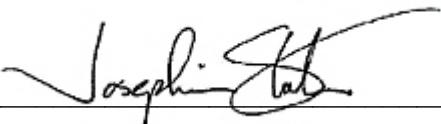
1 Washington D.C. 20002  
2 Telephone (202) 514-4122  
3 martin.mcdermott@usdoj.gov

4 19. EPA and Plaintiffs recognize and acknowledge that the obligations imposed upon  
5 EPA under this Consent Decree can only be undertaken using appropriated funds legally  
6 available for such purpose. No provision of this Consent Decree shall be interpreted as or  
7 constitute a commitment or requirement that the United States obligate or pay funds in  
8 contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision  
9 of law.

10 20. If for any reason the Court should decline to approve this Consent Decree in the  
11 form presented, this agreement is voidable at the sole discretion of any party and the terms of  
12 the proposed Consent Decree may not be used as evidence in any litigation between the parties.

13 21. The undersigned representatives of Plaintiffs and Defendants certify that they are  
14 fully authorized by the party(ies) they represent to consent to the Court's entry of the terms and  
15 conditions of this Decree.

16 DATED: April 12, 2024

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18 HON. JOSEPHINE L. STATON  
19 UNITED STATES DISTRICT JUDGE

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1 COUNSEL FOR EAST YARD COMMUNITIES FOR ENVIRONMENTAL JUSTICE,  
2 PEOPLE'S COLLECTIVE FOR ENVIRONMENTAL JUSTICE, and SIERRA CLUB:  
3

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*Attorney for Plaintiffs East Yard Communities for  
Environmental Justice, People's Collective for  
Environmental Justice, and Sierra Club*

1 COUNSEL FOR DEFENDANTS:

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*/s/ Martin F. McDermott*

MARTIN F. McDERMOTT

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